OBJECTIVE 1.4 Identify constitutional law, statutory law, and case law governing emergency driving as use of deadly force in terminating pursuits.

Emergency Driving As Use of Deadly Force

INTRODUCTION

Using a vehicle to block or ram a fleeing suspect may be deadly force, subject to the same laws that apply to firing a gun to prevent escape of a suspect. The United States Supreme Court discussed this principle in *Brower v. County of Inyo*, 489 U.S. 593, 103 L. Ed. 2d 628, 109 S. Ct. 1378 (1989). Use of a roadblock or ramming may be a "seizure" subject to the reasonableness standard under the Fourth Amendment of the federal constitution.

HISTORICAL CONTEXT

As discussed in Objectives 1.1 and 1.2, law enforcement officers must be mindful of various state laws that bear on emergency and non-emergency law enforcement driving. State tort laws may apply to non-emergency law enforcement driving. State laws often grant emergency driving exemptions and limited immunities to law enforcement officers. These state emergency exemption statutes may impose special duties on law enforcement emergency driving. Each state is largely free to legislate as it sees fit in defining the conditions that govern emergency vehicle operation.

The federal constitution and federal statutes define another set of legal rights and obligations. Law enforcement officers employed by state and local governments cannot, under the authority of state law, violate rights secured to people under the federal constitution. Section 1983 of title 42 of the U.S. code allows persons to sue governmental defendants, such as law enforcement officers and agencies, for deprivation of rights, privileges or immunities under the federal constitution. The Fourth Amendment provides, in part, that "the right of the people to be secure in their persons…, against unreasonable searches and seizures, shall not be violated." Persons injured as a result of a police roadblock or intentional ramming may claim that the roadblock or ramming was an unreasonable seizure in violation of the right to be free of unreasonable seizures under the Fourth Amendment.

Over the years, several U.S. Supreme Court decisions have paved the way for individuals to sue law enforcement officers and their employing towns, cities, or counties for deprivation of federal constitutional rights. In 1961, the Supreme Court ruled that an individual could sue state and local law enforcement officers who violated a right guaranteed by the federal constitution. *Monroe v. Pape*, 365 U.S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473 (1961), *overruled, Monell v. Dep't of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978), *overruled in part, Canton v. Harris*, 489 U.S. 378, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989). For the first time, money damages could be recovered from individual officers who violate federal rights.

In 1978, the Supreme Court extended the right to recover money damages for a constitutional depriva-tion to allow suits against towns, cities, and counties with a policy or custom that violated a federal constitutional right. *Monell v. Dep't of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). Under *Monell*, liability is imposed on a town, city, or county government only if the injured party can prove an official policy or unofficial custom caused the deprivation of a federal right. However, a local governmental employer is not

liable simply because one of its law enforcement officers violates a federal right. The constitutional deprivation must be the product of a governmental policy or custom.

In 1989, the Supreme Court recognized a suit against a town, city, or county for having a policy of deliberate indifference to inadequate training of its law enforcement officers. *City of Canton v. Harris*, 489 U.S. 378, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989). If officers receive little or no training to the point constitutional violations are almost inevitable, the employing town, city, or county may be liable for "failure to train."

USE OF DEADLY FORCE

The Supreme Court has held that a law enforcement officer can use deadly force to prevent the escape of a fleeing suspect only where the officer has probable cause to believe the suspect poses a threat of death or serious physical harm to the officer or to others. Apprehension of a suspect by use of deadly force is a "seizure" subject to the reasonableness requirement of the Fourth Amendment. Courts determine the "reasonableness" of a Fourth Amendment seizure by balancing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." See *Tennessee v. Garner*, 471 U.S. 1, 85 L. Ed. 2d 1, 105 S. Ct. 1694 (1985*), cert. denied, Memphis Police Dep't v. Garner*, 510 U.S. 1177, 127 L. Ed. 2d 565, 114 S. Ct. 1219 (1994).

A suspect driving in a motor vehicle at high speeds in a reckless manner jeopardizes public safety. Where the suspect refuses to stop driving that endangers the public, and other efforts to make a suspect stop are ineffective, courts have approved deadly force directed toward the fleeing vehicle's driver.

In *Smith v. Freeland*, 954 F.2d 343 (6th Cir. 1992), *cert. denied*, 504 U.S. 915, 118 L. Ed. 2d 557, 112 S. Ct. 1954 (1992), a speeding driver refused to stop, accelerated up to 90 mph, and finally stopped on a dead end street. Although blocked in by the officer, the driver rammed the officer's car twice and went around it. The officer fired one shot at the driver as the car went by him, killing the driver. The court of appeals concluded the officer acted reasonably in shooting since the driver already threatened many people and would have threatened more, including other officers, had he escaped.

In *Cole v. Bone*, 993 F.2d 1328 (8th Cir. 1993), a tractor-trailer driver went on a 50 mile rampage at speeds up to 90 mph. Over 100 cars were forced off the road in heavy holiday traffic before officers shot and killed the driver as the truck continued on. The court of appeals approved this use of deadly force as reasonable and necessary. The threat to the public was immediate and substantial. Other ways to stop the truck - roadblocks and shooting out the tires - did not work. See also *Puglise v. Cobb County*, 4 F. Supp. 2d 1172 (N.D. Ga. 1998) (shooting to stop driver who drove at excessive speeds and rammed truck at police officers not constitutionally unreasonable use of force).

Roadblocks and ramming, like shooting, may be lawful, valid deadly force in limited and extreme circumstances. The burden of proof on the officer is substantial: The threat to the public must be extremely high and alternatives to deadly force should be unsuccessful or clearly impractical. Otherwise, the roadblock or intentional ramming may be considered an unreasonable seizure in violation of the Fourth Amendment.

UNREASONABLE SEIZURE CLAIMS

In its seminal decision in *Brower v. County of Inyo*, the Supreme Court addressed the question of whether a "deadman's roadblock" is an unreasonable seizure in violation of the Fourth Amendment.

Case Thirty-One: Deadman's Roadblock

BROWER v. CONTY OF INYO, 489 U.S. 593, 103 L. Ed. 2d 628, 109 S. Ct. 1378 (1989).

The driver of a stolen vehicle was killed at the end of a high speed chase when he crashed into a police roadblock. Members of the driver's family brought an action under 42 USC §1983 claiming that the roadblock amounted to an unreasonable seizure of the driver in violation of the Fourth Amendment. The family claimed that police had erected a "deadman's roadblock" by positioning an 18-wheel tractor-trailer across both lanes of the driver's escape route, concealing the roadblock behind a curve in the road and leaving it unilluminated, and aiming a police car's headlights in such a fashion as to blind the driver on his approach.

Reversing the Ninth Circuit, the Supreme Court held that the allegations in the complaint sufficiently alleged a "seizure." The Court stated:

> *"It is clear…that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement…, nor whenever there is a governmentally caused and governmentally desired termination of an individual's freedom of movement..., but only when there is a governmental termination of freedom of movement through means intentionally applied."*

The Court held that it was enough for a seizure that the driver "was meant to be stopped by the physical obstacle of the roadblock---and that he was so stopped." However, the Court went on to say that the seizure must be evaluated for reasonableness:

> *"Seizure" alone is not enough for 1983 liability; the seizure must be "unreasonable." …Thus, the circumstances of this roadblock, including the allegation that headlights were used to blind the oncoming driver, may yet determine the outcome of this case.*

The Court remanded the case to the Ninth Circuit to consider whether the district court properly dismissed the Fourth Amendment claim on the basis that the alleged roadblock did not effect a seizure that was "unreasonable."

Since *Brower*, several federal and state courts have addressed the issue of whether a police roadblock or ramming effected an unreasonable seizure in violation of the Fourth Amendment. These courts employ the analysis in *Brower* and essentially ask two questions: (1) did the roadblock or ramming constitute a seizure under the Fourth Amendment? and (2) if so, was the seizure unreasonable?

ROADBLOCKS

In the following case, the court employed the two-part analysis in *Brower* to determine whether a rolling roadblock was an unreasonable seizure under the Fourth Amendment.

Case Thirty-Two: Rolling Roadblock May Be Unreasonable Seizure

HAWKINS v. CITY OF FARMINGTON, 189 F.3d 695 (8th Cir. 1999).

A dispatcher informed a city police officer that the state highway patrol was in pursuit of a speeding motorcyclist and had requested assistance. The officer positioned his police car in the median of a highway and waited for the southbound motorcycle to appear.

When the officer spotted a motorcycle coming around the bend at a high rate of speed, he activated his emergency lights and siren. The officer also decided to try to slow or stop the motorcyclist by pulling slowly into the passing lane of the southbound highway. The police car slowly moved out onto the highway at an idle. Believing the police car was going to turn left and travel southbound, the motorcyclist changed lanes to the right. However, the police car kept traveling across the highway and struck the motorcyclist who sustained severe injuries in the collision.

The motorcyclist brought suit and claimed that the rolling roadblock effected an unreasonable seizure in violation of the Fourth Amendment.

The Eighth Circuit Court of Appeals held that there is ample evidence for a jury to find that the rolling roadblock constituted a seizure and ample evidence for a jury to find that the officer's conduct was unreasonable. Regarding the issue of reasonableness, the court stated:

> *"Reasonableness of the seizure must be determined on the totality of the circumstances and is to be judged from the perspective of a reasonable officer on the scene without regard to the underlying intent or motivation. An officer's evil intentions will not make a Fourth Amendment seizure out of an objectively reasonable use of force, nor will an officer's good intentions make an objectively unreasonable use of force constitutional."*

See also *Buckner v. Kilgore*, 36 F.3d 536 (6th Cir. 1994), *reh'g, en banc, denied by* 1994 U.S. App. LEXIS 33075 (6th Cir. 1994) (claim that roadblock was created only seconds before speeding motorcycle collided with roadblock sufficient to allege unreasonable seizure). But see *Carter v. Lucas*, 1994 U.S. App. LEXIS 18235 (4th Cir. 1994) (rolling roadblock not a seizure where no contact between fleeing car and cruiser and no attempt to run fleeing car off road).

In other instances, such as in the following case, the courts find the roadblock to be a "seizure" but do not find the use of force to be unreasonable under the circumstances.

Case Thirty-Three: Roadblock A Seizure But Reasonable Use Of Force

SEEKAMP v. MICHAUD, 109 F.3d 802 (1st Cir. 1997).

During a late night chase, a speeding motorist ignored pursuing vehicles, drove through a toll plaza without stopping, and recklessly evaded a rolling roadblock. A state trooper was ordered to set up a roadblock north of a toll plaza at the end of a straightaway.

The trooper commandeered a flatbed tractor-trailer loaded with lumber and parked it across the three southbound lanes. The trooper completed the roadblock by parking his cruiser at the rear of the tractor-trailer and shined the cruiser's headlights in the direction the motorist would be approaching. Other tractor-trailers were parked along the breakdown lane parallel to the blocked travel lanes. A fifty-foot gap left between two of the tractor-trailers allowed vehicular traffic to proceed around the roadblock. Street lights, lights from the cruiser, and lights from the tractor-trailer lit the entire roadblock area.

In approaching the roadblock, the motorist seemed to brake several times but failed to come to a

complete stop. The motorist collided with the tractor-trailer parked across the southbound lanes and suffered injuries. The motorist sued under 42 USC §1983 claiming that the roadblock effected an unreasonable seizure in violation of the Fourth Amendment.

The First Circuit Court of Appeals first determined that the roadblock constituted a seizure under the Fourth Amendment because the motorist was meant to be stopped by the physical object of the roadblock and he was so stopped.

The court next addressed the question of whether the seizure was unreasonable. Citing Graham v. Connor, 490 U.S. 386 (1989), the court identified three factors for evaluating whether the force used to effect a seizure was objectively reasonable: "(1) severity of the crime; (2) whether there was 'an immediate threat to the safety of the officers or others;' and (3) whether the suspect was 'actively resisting arrest or attempting to evade arrest by flight.'" The court then observed:

> *"The Fourth Amendment reasonableness test requires careful attention to the circumstances in the particular case…Unlike the 'deadman's roadblock' in Brower,…[this] roadblock was brightly illuminated and located at the end of a long straightaway. The undisputed evidence established that it was visible from approximately 1500 feet to the north and the [motorist's car] could have been brought to a complete stop without contacting the roadblock equipment but for its malfunctioning brakes. An adequate corridor for circumvention, though not readily apparent to vehicles approaching at excessive speed, had enabled many motorists to bypass the roadblock before [the motorist] arrived."*

The court concluded that the district court correctly ruled that no rational jury could have found this roadblock unreasonable in the circumstances

In still other cases, the courts do *not* find the roadblock to be a seizure under the Fourth Amendment.

Case Thirty-Four: Roadblock Not A Seizure

ROWE v. CITY OF MARLOW, 1997 U.S. App. LEXIS 15386 (10th Cir. 1997).

A few hours after a *mother called the sheriff's department to report that her 13-year-old daughter took the family van without permission, a police officer spotted the van traveling 84 mph in a 40 mph zone. A high speed chase on US 81 ensued. During the high speed chase, the van ignored pursuing vehicles, evaded a rolling roadblock, and appeared to attempt to ram several police cars from behind.*

As the van approached Bowie, Texas, the Bowie police positioned their cars to block off the road into which US 81 ended in a "T" intersection to prevent any cars from entering the intersection from the west or east. A warning sign, two large stop signs, and two sets of alternating red lights alerted drivers traveling south on US 81 that the road ended in a "T" intersection. Pursuing officers slowed down a mile from the "T" intersection

The van entered the intersection at approximately 87 mph and crashed into a car dealership. The 13-year-old girl driver was ejected from the van and killed. The girl's father brought a suit under 42 USC §1983 claiming that the officers unreasonably seized the girl in violation of the Fourth Amendment.

In determining that a seizure had not occurred, the court stated:

> *"In this case, the officers' assertion of authority (their pursuit of Alysia with lights and siren activated, their placement of their police cars in various ways to attempt to slow down or stop her) did not cause her to submit or stop. Rather, she stopped only when she entered the "T" intersection at a high rate of speed, despite warnings that she needed to stop, lost control of the van and crashed. In sum, her freedom of movement was not stopped by 'means intentionally applied.'"*

See also *Morais v. Yee*, 162 Vt. 366, 648 A.2d 405 (1994) (no seizure where motorcyclist fatally crashes in attempt to avoid rolling roadblock); *Roddel v. Town of Floro*, 580 N.E.2d 255 (Ind. Ct. App. 1991) (no seizure where motorist collides with tree in attempt to avoid roadblock).

Where the suspect has simply lost control of his vehicle during a high speed chase, a Fourth Amendment claim will usually fail. In *Brower*, the court specifically stated that no seizure occurs when pursuing police seek to stop the suspect "only by show of authority represented by flashing lights and continuing pursuit" because the suspect's freedom of movement is not terminated. A pursuit alone does not constitute a seizure.

When plaintiffs have tried to raise unreasonable seizure claims in situations where the suspect has simply lost control of his vehicle during a high speed chase, the courts typically follow *Brower* and find that there was no governmental termination of the suspect's freedom of movement and, therefore, no seizure prohibited by the Fourth Amendment. See *Estate of Story v. McDuffie County, Georgia*, 929 F. Supp. 1523 (S.D. Ga. 1996), *affirmed without opinion*, 110 F.3d 798 (11th Cir. 1997) (no seizure where suspected gasoline thief fatally crashes when rounding a curve during chase); *Wozniak v. Cavender*, 875 F. Supp. 526 (N.D. Ill. 1995) (no seizure where pursued ATV crashes into ditch); *Carroll v. Borough of State College*, 854 F. Supp. 1184 (M.D. Pa. 1994), *affirmed without opinion*, 47 F.3d 1160 (3d Cir. 1995) (no seizure where fleeing motorcyclist fails to negotiate curve and crashes); *Rosado v. Deters*, 5 F.3d 119 (5th Cir. 1993) (pursuit alone cannot constitute a seizure); *Montgomery v. County of Clinton*, 743 F. Supp. 1253 (W.D. Mich. 1990), *affirmed without opinion*, 940 F.2d 661 (6th Cir. 1991) (no seizure where speeding teen driver fatally crashes into utility pole during chase); *Patterson v. City of Joplin*, 878 F.2d 262 (8th Cir. 1989) (no seizure where speeding motorcyclist fatally crashes into car during high speed chase); *Roach v. City of Fredericktown*, 882 F.2d 294 (8th Cir. 1989) (no seizure where suspected car thief fatally collides with oncoming car during chase).

Of course, those injured in high speed chases can still bring suit under state or federal law. See Objective 1.2 for discussion of negligent pursuit claims under state law and Objective 1.3 for discussion of pursuit claims under federal law alleging violation of substantive due process rights under the Fourteenth Amendment.

And finally, a few decisions involving roadblocks have not applied the *Brower* two-part test because the incidents took place before the Supreme Court decided *Brower*. See *Donovan v. City of Milwaukee*, 17 F.3d 944 (7th Cir. 1994); *Horta v. Sullivan*, 4 F.3d 2 (1st Cir. 1993*), certified question answered,* 418 Mass. 615, 638 N.E.2d 33 (Mass. 1994), *answer remanded,* 36 F.3d 210 (1st Cir. 1994).

RAMMING

Like roadblocks, police ramming of a fleeing suspect's car may be subject to unreasonable seizure claims. Central to a determination of whether a police ramming is an unreasonable seizure is the intention of the officer accused of ramming. As the next case demonstrates, merely colliding with a suspect's vehicle during a pursuit does not necessarily amount to an unreasonable seizure in violation of the Fourth Amendment.

Case Thirty-Five: Unintentional Ramming Not A Seizure

BATTLE v. CITY OF FLORALA, 28 F. Supp. 2d 1331 (M.D. Ala. 1998).

While driving home from a local club, a driver noticed an officer's blue lights in her rear view mirror. The driver believed the officer was chasing a group of young boys standing alongside the road. The driver drove her car around an S-shaped curve in the road, and the officer rear-ended her car with his police car.

According to the officer's version of the facts, the officer observed the driver run a stop sign. The officer followed the car and, when he observed the car run another stop sign, the officer turned on his emergency blue lights. Instead of stopping, the driver accelerated and a high speed chase ensued. The

chase ended when the officer crashed into the rear of the driver's car.

The driver brought suit under 42 USC §1983 claiming that the officer's rearend collision of her car amounted to an unreasonable seizure in violation of the Fourth Amendment.

The Alabama district court determined that the collision was not a seizure under the Fourth Amendment. The court stated:

> *"Because [the driver] has neither pleaded nor offered any evidence to prove that [the officer's] ramming was intentional, nor, according to [the driver], was the action taken in an attempt to apprehend her, the Court finds that the accident does not amount to a seizure and, thus, does not implicate the Fourth Amendment."*

See also *Frye v. Town of Akron*, 759 F. Supp. 1320 (N.D. Ind. 1991) (unintentional collision between pursuing police vehicle and fleeing motorcycle not a seizure); *Campbell v. White*, 916 F.2d 421 (7th Cir. 1990), *cert. denied*, 499 U.S. 922, 113 L. Ed. 2d 248, 111 S. Ct. 1314 (1991) (fatal collision between police car and motorcycle during high speed chase not a seizure).

However, intentional and successful use of force to stop a fleeing suspect's vehicle would constitute a seizure under the Fourth Amendment. In considering a hypothetical scenario, the *Brower* court stated that if the "police cruiser had pulled alongside the fleeing car and sideswiped it, producing the crash, then the termination of the suspect's freedom of movement would have been a seizure." But even if an intentional ramming is deemed a seizure, the use of force may be considered reasonable. The next case features an intentional ramming that is found to be a reasonable seizure.

Case Thirty-Six: Intentional Ramming A Seizure But Reasonable Use Of Force

WEAVER v. STATE OF CALIFORNIA, 63 Cal. App. 4th 188, 73 Cal. Rptr. 2d 571 (Cal. Ct. App. 1998), *review denied*, 1998 Cal. LEXIS 4394 (Cal. 1998).

A 14-year-old boy who agreed to wash a neighbor's car took the car joyriding with several friends. The next day the boy replaced the car's rear license plate with another plate and took a friend driving. When police tried to stop the car, the juvenile driver fled onto a freeway. The pursuit was then continued by a unit of the California Highway Patrol (CHP).

After the pursuit had lasted over an hour and had covered several freeways, a CHP officer and his supervisor heard a radio dispatch regarding the fleeing stolen vehicle and joined the chase. The supervisor directed the officer to take over the pursuit in the primary position, and the supervisor took up the position behind the officer. At this time, officers from other CHP units backed off the chase, and a Los Angeles Sheriff's helicopter overhead had the fleeing car in view.

Soon after, the juvenile driver exited the freeway and circled streets in residential areas at speeds

ranging from 15 mph to 70 mph. At one point, the juvenile driver pulled into a residential driveway and stopped. The officer pulled in behind him but, fearing the driver would back up into him, the officer moved his cruiser back. The driver backed out of the driveway after striking the front bumper of the officer's cruiser.

Several times during the pursuit through the residential areas, the supervisor directed the officer to use a pursuit immobilization technique (PTI) maneuver, but the officer declined because he believed the conditions were not safe. Although both the officer and the supervisor had received training on the use of the PIT maneuver, the officer had never used it to stop a suspect before. According to the CHP manual, the PIT maneuver is a form of ramming that should not be used at speeds in excess of 35 mph.

When the fleeing car was traveling on a frontage road near the freeway where there were no pedestrians and no traffic, the officer rammed the rear of the fleeing car, causing it to spin out and hit an abutment wall. There was a factual dispute as to how fast the cars were traveling at the time of the ramming. The passenger in the fleeing car was seriously injured. In addition to state claims, the passenger brought suit under 42 USC §1983 claiming that the officer's ramming of the fleeing car constituted to an unreasonable seizure in violation of the Fourth Amendment.

The California Court of Appeals first determined that the ramming was a seizure under the Fourth Amendment:

> *"In this case, we conclude that the evidence is undisputed that [the passenger] was subject to a seizure within the meaning of the Fourth Amendment. It was without dispute that [the officer and the supervisor] knew that there were two individuals in the [fleeing car] and intended that [the officer] employ the PIT maneuver…Thus, the officers admittedly intended to stop the [fleeing car]…The fact that [the officer and the supervisor] may not have intended any injury to [the passenger] as a result of the PIT maneuver is irrelevant to the issue of whether a seizure occurred because there was nevertheless an intentional acquisition of physical control over the [fleeing car]."*

Next, the court looked at the reasonableness of the seizure:

> *"We conclude as a matter of law no rational jury could find the instant seizure unreasonable under the circumstances here. A 14-year-old driver who has led police on a 2-hour pursuit over several freeways and through residential neighborhoods at unsafe speeds and in disregard of the traffic laws clearly lacks the skills and judgment of a mature driver. [The driver] exhibited a wanton disregard for public safety and a willingness to persist in violent conduct to evade the police, even ramming a police car in his attempt to escape when he clearly had an opportunity to stop the pursuit in a safe manner when he pulled into a driveway. According to the officers, so many*

> *bystanders had come out of their homes while [the driver] was circling through the residential streets that the area resembled a 'parade route.' With so many vulnerable bystanders in the area, and an unpredictable, youthful driver who had clearly expressed a willingness to engage in violent conduct to continue his flight, the officers acted reasonably in employing deadly force to stop [the driver]."*

GOVERNMENTAL OR SUPERVISORY LIABILITY

Police roadblocks and ramming that amount to unreasonable seizures may not only expose the involved officers to liability but also may expose the governmental employer and the pursuit supervisor to liability. An employing town, city, or county may be directly responsible under 42 U.S.C. §1983 when an employee executes a governmental policy or custom that inflicts constitutional injury. See *Monell v. Dep't of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978), also discussed earlier. Persons injured as a result of a police roadblock or intentional ramming may claim that the police department had a policy or custom of encouraging unreasonably deadly roadblocks and ramming at the expense of the safety of the public, that is, that the policy or custom was a product of deliberate or reckless indifference.

To succeed on a claim based on an unconstitutional policy or custom, the plaintiff must prove the following: (1) an official policy or unofficial custom of unconstitutional misconduct, (2) a deliberate indifference to or tacit authorization of such misconduct; and (3) the policy or custom was the moving force behind the constitutional violation. *Feist v. Simonson*, 36 F. Supp. 2d 1136, 1149 (D. Minn. 1999), also discussed in Objective 1.3 at **Case Thirty.** These requirements present a formidable burden for plaintiffs.

A governmental employer (or a supervising police officer) may also be liable under 42 U.S.C. §1983 for constitutional injuries caused by the failure to train police officers. Third parties injured as the result of roadblocks or ramming may claim that the employing town, city, or county, and/or the police officer supervising the pursuit failed to train the involved officers in the use of deadly force to terminate a pursuit.

However, an action for failure to train will lie "only where the failure amounts to deliberate indifference to the rights of persons with whom the police come into contact." The failure to train must be coupled with a deliberate or conscious choice in order to rise to the level of a governmental policy or custom. In other words, "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy-makers of the city can reasonably be said to have been deliberately indifferent to the need." Finally, the failure to train must be the cause of the constitutional violation. See *City of Canton v. Harris*, 489 U.S. 378, 389-390, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989), also discussed earlier.

Again, this deliberate indifference standard can be difficult for plaintiffs to meet. In *Canton*, the Supreme Court was careful to note that governmental liability for failure to train will not be had merely because an individual officer is insufficiently trained or because an individual officer makes a mistake. *Seekamp v. Michaud*, 109 F.3d 802 (1st Cir. 1997) (evidence that subordinate officers received training on high speed pursuits and roadblocks defeats claim against supervisor for failure to train). But see *Frye v. Town of Akron*, 759 F. Supp.

1320 (N.D. Ind. 1991) (allegations that town provided no training on use of deadly force held sufficient to state claim for failure to train).

Whether the liability of a governmental employer for failure to train or for an unconstitutional policy or custom depends on the liability of the pursuing officer is in dispute. Some courts hold that a governmental employer can only be liable for failure to train or for an unconstitutional policy or custom if the police officer violates the federal constitution. That is, if an officer's roadblock or ramming is considered a reasonable seizure or not a seizure at all, then the officer has not violated the constitution and the officer's governmental employer cannot be held liable for an unconstitutional policy or custom

or for failure to train. See *Montgomery v. County of Clinton*, 743 F. Supp. 1253 (W.D. Mich. 1990), *affirmed without opinion,* 940 F.2d 661 (6th Cir. 1991) (pursuit not a seizure so plaintiff's action against employing county for failure to train and for unconstitutional policy or custom must fail) *Roddel v. Town of Floro*, 580 N.E.2d 255 (Ind. Ct. App. 1991) (roadblock not a seizure so plaintiff's failure to train action against employing town and county must fail); *Roach v. City of Fredericktown*, 882 F.2d 294 (8th Cir. 1989) (pursuit neither a seizure nor shocks the conscience so employing city cannot be liable for failure to train).

Other courts hold that independent claims for failure to train and for unconstitutional policy or custom can be maintained against a governmental employer despite the exoneration of the involved police officers. See *Carroll v. Borough of State College*, 854 F. Supp. 1184 (M.D. Pa. 1994), *affirmed without opinion,* 47 F.3d 1160 (3d Cir. 1995) (fleeing motorcyclist's crash not a seizure but plaintiff can still maintain failure to train action against police chief and employer); *Frye v. Town of Akron*, 759 F. Supp. 1320 (N.D. Ind. 1991) (collision between officer and fleeing suspect not a seizure but plaintiff can still maintain failure to train claim against employing town).

GENERAL PRINCIPLES

Some general principles of federal law relating to emergency vehicle operation as a use of deadly force are as follows:

1. A roadblock that terminates a suspect's freedom of movement constitutes a seizure subject to the reasonableness test under the Fourth Amendment. Ramming that intends to terminate a suspect's freedom of movement constitutes a seizure subject to the reasonableness test under the Fourth Amendment.

2. Some roadblocks and some ramming may not be considered seizures.

3. Even if a particular roadblock or ramming is deemed a seizure, its use may be reasonably necessary for immediate apprehension of a violent felon, or a suspect who is threatening harm in the course of an extremely hazardous pursuit.

4. A governmental employer may be liable if it offers little or no training in use of deadly force. Training in the intentional use of force must be sufficient to enable an officer to perform normal and recurring duties without violating constitutional rights.

SUMMARY

Using a vehicle to block or ram a fleeing suspect may be deadly force, subject to the same laws that apply to firing a gun to prevent escape of a suspect. Persons injured as a result of a police roadblock or ramming may claim that the roadblock or ramming deprived them of their right to be free from unreasonable seizures under the Fourth Amendment of the federal constitution. Some roadblocks and ramming are not seizures under the Fourth Amendment. Even if a roadblock or ramming is considered a seizure, the use of deadly force may be reasonable under the circumstances. A roadblock or ramming resulting in injury or death may also expose the governmental employer or the supervisory officer to liability for failure to train or for an unconstitutional policy or custom.

SUGGESTED INSTRUCTIONAL METHODOLOGY

LECTURE WITH SLIDES

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

LECTURE AND CLASS DISCUSSION

Utilize case summaries to present legal principles and involve students in discussion of relevant issues

SMALL GROUPS WITH CASE STUDIES

In groups of 3-6, present each group with the cases provided above and additional fact situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

RESOURCES AND AIDS

1. Relevant federal constitutional and statutory provisions
2. Agency policies

SUGGESTED EVALUATION METHODOLOGY

STUDENTS

1. Written or verbal response to questions regarding legal principles

2. Observation of strategies, decisions, or methods used by a driver when exposed to various driving scenarios

COURSE

1. Observe the driving of officers during the simulations of emergency vehicle operations

2. Review agency collision reports for failure to heed legal considerations